

# EXHIBIT H

**From:** White, Marina <Marina.White@aig.com>

**Sent:** Thursday, July 9, 2020 6:36 PM

**To:** Antoinette Banks

**Cc:** Sandy Cridland; Kristin Diaz-Garcia; Lauren Gabler; Domanico, Gene

**Subject:** RE: 4467406650US Arthrex, Inc., Revised Highly Confidential Notice - Status on Def Counsel Approval

Antoinette,

Thank you for your patience with this as I draft our response and look discuss defense counsel internally. After carefully reviewing the applicable case law and relevant policy language with respect to the cases you forwarded me, National Union is constrained to advise you that it must maintain its determination that the subpoena does not constitute a covered Claim under the Policy it issued to Arthrex.

As you know, there is a long line of case law where the courts have expressly held that a subpoena is not a claim because it does not qualify as a demand for non-monetary "relief," which is commonly understood to mean a legal remedy or redress for a wrong requested from a court. See, e.g., *Employers' Fire Ins. Co. v. ProMedica Health Sys., Inc.*, 524 F. App'x 241, 252 (6th Cir. 2013) (finding subpoenas did not constitute claims because they sought information, not a remedy); *Ctr. for Blood Research, Inc. v. Coregis Ins. Co.*, Civ. A. 01-10708-GAO, 2001 WL 34088617, at \*3 (D. Mass. Nov. 14, 2001) (finding subpoena's demand for production of documents did not qualify as a demand for non-monetary relief because it did not seek redress for a wrong or a remedy), *aff'd*, 305 F.3d 38 (1st Cir. 2002); *Diamond Glass Companies, Inc. v. Twin City Fire Ins. Co.*, No. 06-CV-13105 BSJ/AJP, 2008 WL 4613170, at \*4 (S.D.N.Y. Aug. 18, 2008) (finding that a grand jury subpoena did not constitute a demand for non-monetary relief for similar reasons).

In fact, two of the most recent federal appellate court decisions have rejected the notion that subpoenas constitute demands for nonmonetary relief. See, e.g., *BioChemics, Inc. v. AXIS Reinsurance Co.*, 924 F.3d 633, 640 (1st Cir. 2019); *MusclePharm Corp. v. Liberty Ins. Underwriters, Inc.*, 712 F. App'x 745, 754 (10th Cir. 2017). As explained by the Tenth Circuit in *MusclePharm*, the purpose of a subpoena is to gather information "to determine whether there w[ill] ultimately be any basis for seeking monetary and/or non-monetary relief." *Id.* The subpoena is not a demand for nonmonetary "relief" in its own right. The same rationale applies here. By issuing the subpoena, the DOJ is not requesting a legal remedy or redress; it is gathering information to determine whether there is any basis for instituting a proceeding or investigation that may ultimately fall within the definition of Claim under the Policy.

The *MusclePharm Corp.* and *BioChemics* cases are well-reasoned decisions and they are more analogous here. For example, Clause 2(b) of the Arthrex Policy defines Claim, in pertinent part, as: (i) "a written demand for monetary or non-monetary relief"; or (iii)(2)(a) "a civil, criminal, administrative or regulatory investigation of an Individual Insured...in the

case of an investigation by the Securities Exchange Commission ("SEC") or a similar state or foreign government authority... after the service of a subpoena upon such Individual Insured". The BioChemics court makes it clear that a "subpoena" is merely a component of the term "Claim" but it does not constitute a Claim by itself. BioChemics at 640-41. The BioChemics Court expressly recognized that to conclude a subpoena qualifies as "non-monetary relief" would render the language in the latter definition of "Claim" redundant or moot. Moreover, like here, the Court reasoned that such an approach "requires us to construe a portion of that definition that does not mention subpoenas at all as if it makes them "Claim[s]" in their own right, even though the portion of the definition that expressly mentions subpoenas treats them as if they are merely components of a "Claim." Id. (citing J.A. Sullivan Corp. v. Commonwealth, 397 Mass. 789, 494 N.E.2d 374, 378 (1986) (noting that every phrase in a contract must be given meaning that, when interpreted relative to other provisions in the document, gives the contract "workable and harmonious" effect)).

We believe that the more well-reasoned decisions provide a thorough analysis of the term "relief," and conclude that a subpoena is not a claim because "relief" means a legal remedy or redress for a wrong and not merely a request for documents or information. Additionally, the cases cited in your May 11, 2020 email are distinguishable for two reasons. First, they involve policies that are materially different from the language of the Policy here. The Arthrex Policy explicitly recognizes limited circumstances when coverage is afforded to the insured for responding to a subpoena: (i) when an Individual Insured is served with a subpoena as part of an SEC investigation (D&O Coverage Section, Section 2.(b)(iii)(2)(a)); and (ii) when an Individual Insured receives a verifiable request to produce documents but only if the request is made by an Enforcement Body (Endorsement # 26 Pre-Claim Inquiry/Costs Coverage). Neither apply here. Second, the cases you cite all suffer from the same flawed analysis that conflate the components of the definition of Claim. As the BioChemics court recognized, a subpoena is a component of a claim but not a claim in and of itself. If we were to conclude here that a subpoena constitutes a claim, in and of itself, simply because it requires the insured to provide information, then the two referenced provisions of the Arthrex policy would be rendered redundant or moot: Section 2.(b)(iii)(2)(a)) and Endorsement # 26 (Pre-Claim Inquiry/Costs Coverage).

In conclusion, National Union finds that the long line of cases holding that a subpoena does not constitute a demand for non-monetary relief on its own, and the logic applied by the MusclePharm and BioChemics court are more analogous and persuasive here. Therefore, National Union maintains its coverage position that the subpoena does not constitute a Claim, and will treat the subpoena as notice of a potential claim, subject to a full reservation of rights under the Policy, at law, and in equity.

With respect to defense counsel, we would like to propose a rate cap. Since we are treating the subpoena as a notice of potential claim at this time and are not yet contributing to coverage towards this matter, we cannot impose a cap this time. However, after discussing the rates for Ropes and Gray, Wilkie Farr, and Sidley Austin internally, we would like to give advance notice that the rates across the board are higher than is reasonably necessary to defend a case of this nature. Should this case ripen to a claim and coverage be triggered, we would be proposing a rate cap of \$1,000/hr for all attorneys on this matter. Let me know if that figure is amenable to the assigned attorneys.

Thank you again for your patience with this and let me know if you have any questions—

Regards,  
**Marina White**  
**AIG**

Analyst  
Financial Lines | Directors & Officers  
80 Pine Street, 5<sup>th</sup> Floor, New York, NY 10005

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Due to the current events, we ask all documentation be submitted electronically to better service your claim. Please send claims documentation to: (email address) [c-Claim@aig.com](mailto:c-Claim@aig.com) and include your claim number in the Subject Line; (mailing address) AIG, Attn: Financial Lines Claims, P.O. Box 25947, Shawnee Mission, KS 66225; (overnight mail) AIG, Attn: Financial Lines Claims, 17200 W. 119th Street, #550, Olathe, KS 66062 For tips on how to convert your hard copy documents to electronic using your phone, please click [here](#).

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**From:** Antoinette Banks [mailto:antoinette.banks@aon.com]  
**Sent:** Thursday, July 09, 2020 1:00 PM  
**To:** White, Marina  
**Cc:** Sandy Cridland; Kristin Diaz-Garcia; Lauren Gabler; Domanico, Gene  
**Subject:** [EXTERNAL] RE: Arthrex, Inc., Revised Highly Confidential Notice - Status on Def Counsel Approval

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Marina,

On Jun 3, you said going to send your response to defense firms retained per Arthrex's April 7<sup>th</sup> email along with AIG's response to the coverage issues by the end of the week. It's now a month later, and you haven't responded to my last 2 emails. As I mentioned in my voicemail, I would like to speak with you today. Please call me ASAP

Regards,

**Antoinette L. Banks, Esq.** | Senior Vice President  
Financial Services Group  
Aon  
425 Market Street | 28th Floor | San Francisco, CA 94105  
Direct: 415.486.7035 | Cell: 415-244-1446  
Fax: 415-486-7029  
[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)

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**From:** Antoinette Banks  
**Sent:** Monday, June 15, 2020 1:14 PM  
**To:** White, Marina <Marina.White@aig.com>  
**Cc:** Sandy Cridland <sandy.cridland@aon.com>; Kristin Diaz-Garcia <Kristin.Diaz-Garcia@arthrex.com>; Lauren Gabler <Lauren.Gabler@arthrex.com>  
**Subject:** Re: Arthrex, Inc., Revised Highly Confidential Notice - Status on Def Counsel Approval

Hi Marina,

I wanted to follow up with you regarding the status of this claim.

Regards,

**Antoinette L. Banks, Esq.** | Senior Vice President | Claims Attorney  
Financial Services Group  
Aon  
[425 Market Street | 28th Floor | San Francisco, CA 94105](#)  
Direct: [415.486.7035](tel:415.486.7035) | Cell: [415-244-1446](tel:415-244-1446)

Fax: [415-486-7029](tel:415-486-7029)  
[antoINETte.banks@aon.com](mailto:antoINETte.banks@aon.com)  
Sent from my iPhone

On Jun 10, 2020, at 8:57 AM, Antoinette Banks <[antoINETte.banks@aon.com](mailto:antoINETte.banks@aon.com)> wrote:

Hi Marina,

I hope you are well. I just wanted to check in with you and see whether you have a status update for us.

Regards,

**Antoinette L. Banks, Esq.** | Senior Vice President | Claims Attorney  
Financial Services Group  
Aon  
[425 Market Street | 28th Floor | San Francisco, CA 94105](#)  
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Fax: [415-486-7029](tel:415-486-7029)  
[antoINETte.banks@aon.com](mailto:antoINETte.banks@aon.com)  
Sent from my iPhone

On Jun 3, 2020, at 2:36 PM, White, Marina <[Marina.White@aig.com](mailto:Marina.White@aig.com)> wrote:

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Sandy,

Yes, I was going to send my response to this along with our response to the coverage issues. I am hoping to get both to you by the end of the week.

Thank you for your patience with this—have a great night.

**Marina White**  
**AIG**

Analyst  
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**From:** Sandy Cridland [<mailto:sandy.cridland@aon.com>]  
**Sent:** Wednesday, June 03, 2020 4:01 PM  
**To:** White, Marina  
**Cc:** Kristin Diaz-Garcia; Lauren Gabler; Antoinette Banks  
**Subject:** [EXTERNAL] RE: Arthrex, Inc., Revised Highly Confidential Notice - Status on Def Counsel Approval

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Hi Marina,

Thank you for your time on this afternoon's call. In following up, I don't believe we received AIG's approval for the defense firms retained per Arthrex's April 7<sup>th</sup> email below so I wanted to close the loop on this. We look forward to hearing from you on this as well as the caselaw review.

Best regards,  
Sandy

**Sandy Sinha Cridland** | Claims Advocate – Financial Services Group  
Commercial Risk Solutions  
**Aon**  
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T: +1 (212) 441-1790 | C: (516) 467-6580 | F: (847) 953-1736  
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**From:** Sandy Cridland  
**Sent:** Monday, May 18, 2020 9:56 AM  
**To:** White, Marina <[Marina.White@aig.com](mailto:Marina.White@aig.com)>  
**Cc:** Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@Arthrex.com](mailto:Kristin.Diaz-Garcia@Arthrex.com)>; Lauren Gabler <[Lauren.Gabler@Arthrex.com](mailto:Lauren.Gabler@Arthrex.com)>; Antoinette Banks <[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)>  
**Subject:** RE: Arthrex, Inc., Revised Highly Confidential Notice - Status on Def Counsel Approval

Good morning Marina,

I hope you had a nice weekend. I am following up on counsel approval for the captioned matter. Can you please confirm whether AIG has approved Ropes and Gray and Willkie Farr as individual counsel for John and Reinhold Schmieding? Thank you.

Best regards,  
Sandy

**Sandy Sinha Cridland** | Claims Advocate – Financial Services Group  
Commercial Risk Solutions

**Aon**

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**From:** Lauren Gabler <[Lauren.Gabler@Arthrex.com](mailto:Lauren.Gabler@Arthrex.com)>

**Sent:** Friday, April 17, 2020 2:30 PM

**To:** Antoinette Banks <[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)>; White, Marina  
<[Marina.White@aig.com](mailto:Marina.White@aig.com)>

**Cc:** Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@Arthrex.com](mailto:Kristin.Diaz-Garcia@Arthrex.com)>

**Subject:** RE: Arthrex, Inc., Revised Highly Confidential Notice-timekeeper Rates/Call  
regarding update

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Marina and Antoinette,

Please see attached. If you need anything further please let me know.

Respectfully,

Lauren Gabler  
Litigation Paralegal  
1370 Creekside Blvd., Naples, FL 34108  
Extension: 72444  
Mobile: (321) 720-7735  
[Lauren.Gabler@Arthrex.com](mailto:Lauren.Gabler@Arthrex.com)

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**From:** Antoinette Banks <[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)>

**Sent:** Friday, April 10, 2020 4:58 PM

**To:** Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@Arthrex.com](mailto:Kristin.Diaz-Garcia@Arthrex.com)>

**Cc:** White, Marina <[Marina.White@aig.com](mailto:Marina.White@aig.com)>; Sandy Cridland  
<[sandy.cridland@aon.com](mailto:sandy.cridland@aon.com)>; Stephen Feick <[steve.feick@aon.com](mailto:steve.feick@aon.com)>; Amy Dunbar  
<[amy.dunbar@aon.com](mailto:amy.dunbar@aon.com)>; Lauren Gabler <[Lauren.Gabler@Arthrex.com](mailto:Lauren.Gabler@Arthrex.com)>; Aaron  
Simpson <[aaron.simpson@aon.com](mailto:aaron.simpson@aon.com)>

**Subject:** Re: Arthrex, Inc., Revised Highly Confidential Notice-timekeeper Rates/Call  
regarding update

Hi Marina,

I hope you're doing well. We would like to schedule a call with you, Arthrex, and Arthrex's defense counsel.

Sandy Cridland will reach out to you to schedule.

Regards,

**Antoinette L. Banks, Esq.** | Senior Vice President | Claims Attorney  
Financial Services Group  
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[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)  
Sent from my iPhone

On Apr 7, 2020, at 2:15 PM, Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@arthrex.com](mailto:Kristin.Diaz-Garcia@arthrex.com)> wrote:

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Marina,

As noted below, Wilkie Farr has been retained to represent Reinhold Schmieding. Martin Weinstein and Andrew English, are the attorneys who will have primary responsibility for this matter, and their billable rates are \$1,700 and \$1,100/hour respectively.

Wilkie Farr and Ropes and Gray do not represent Arthrex in this matter. The Company has agreed, pursuant to the its bylaws, to indemnify Reinhold and John Schmieding for their legal fees and all expenses related to services provided in this matter.

Please let me know if you have any questions.

Thank you,  
Kristin

---

**Kristin Diaz-Garcia**  
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**From:** Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@Arthrex.com](mailto:Kristin.Diaz-Garcia@Arthrex.com)>  
**Sent:** Thursday, April 2, 2020 4:11 PM  
**To:** Antoinette Banks <[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)>; White, Marina <[Marina.White@aig.com](mailto:Marina.White@aig.com)>  
**Cc:** Sandy Cridland <[sandy.cridland@aon.com](mailto:sandy.cridland@aon.com)>; Stephen Feick <[steve.feick@aon.com](mailto:steve.feick@aon.com)>; Amy Dunbar <[amy.dunbar@aon.com](mailto:amy.dunbar@aon.com)>; Lauren Gabler <[Lauren.Gabler@Arthrex.com](mailto:Lauren.Gabler@Arthrex.com)>  
**Subject:** Re: Arthrex, Inc., Revised Highly Confidential Notice-timekeeper Rates

Antoinette:

One update to the email below. Bill Weinreb will no longer be representing Reinhold. Martin Weinsten at Wilkie Farr will take over his representation.

Below is a list of attorneys from Ropes & Gray and Wilkie Farr. I am still waiting on the billing rates for the Wilkie team.

Arthrex is represented by Sidley. I believe the list of attorneys and their respective rates have already been sent over to Aon/AIG.

Please let me know if you have any questions. I would ask that you please keep my paralegal copied on communication moving forward.

Thank you,  
Kristin

Ropes & Gray

- Brien O'Connor
- Katy McDonald. Katy's rate as an associate should be \$610.

Wilkie Farr

- Martin Weinsten
- Andrew English

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**Kristin Diaz-Garcia**

Associate General Counsel  
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**From:** Antoinette Banks <[antoinette.banks@aon.com](mailto:antoinette.banks@aon.com)>  
**Sent:** Thursday, April 2, 2020 3:29 PM  
**To:** White, Marina <[Marina.White@aig.com](mailto:Marina.White@aig.com)>  
**Cc:** Sandy Cridland <[sandy.cridland@aon.com](mailto:sandy.cridland@aon.com)>; Stephen Feick <[steve.feick@aon.com](mailto:steve.feick@aon.com)>; Kristin Diaz-Garcia <[Kristin.Diaz-Garcia@Arthrex.com](mailto:Kristin.Diaz-Garcia@Arthrex.com)>; Amy Dunbar <[amy.dunbar@aon.com](mailto:amy.dunbar@aon.com)>  
**Subject:** Arthrex, Inc., Revised Highly Confidential Notice-timekeeper Rates

Hi Marina,

It was a pleasure speaking with you today.

Per your request:

Brien O'Connor with Ropes and Gray has an hourly rate of \$1,820.00.  
Bill Weinreb's rate with Quinn Emanuel is \$1,325.

I will let you know if the insureds have received any additional information.

Regards,

**Antoinette L. Banks, Esq.** | Senior Vice President | Claims Attorney  
Financial Services Group  
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